



# Scotland Probate Records

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What is Scottish probate? According to the FamilySearch Wiki "Scotland has no 'probate' records - the term is 'confirmation.' The primary document is called a 'testament.'"<sup>1</sup> What then is a testament and what about wills? A testament is the collective term for all documents relating to the probating of a deceased persons estate. A will is a statement by the deceased of how they wish their worldly goods distributed and may be found in a Scottish testament. Testaments were made primarily by the middle and upper classes, most of whom were nobility, gentry, merchants, or tradesmen.

Great information follows in this handout. Some of this information can be found on the FamilySearch wiki page (<http://wiki.familysearch.org>) using a search for "Scotland Probate Records". Be sure to check there for additional information. There is also a small section there called "How Can I Learn More About Scottish Wills and Testaments?" ([https://familysearch.org/learn/wiki/en/How\\_Can\\_I\\_Learn\\_More\\_About\\_Scottish\\_Wills\\_and\\_Testaments%3F](https://familysearch.org/learn/wiki/en/How_Can_I_Learn_More_About_Scottish_Wills_and_Testaments%3F)) with links to additional sources.

How a deceased person's estate was distributed depended on the type of property it was.

## Property

There were two types of property in Scotland, moveable and immovable property. In Scotland before 1868, it was not possible to leave immoveable property (land, buildings, titles or other heritables) to a person by means of a will. It was only possible to give personal property, known as moveable property, by means of a testament.

### Moveable property

Moveable property consisted of anything that could be moved, including household and personal effects, investments, tools, and machinery.

### Immovable Property

Also known as heritable property, it consisted primarily of land and buildings but would also include minerals, mining rights, and titles. This was typically inherited by the eldest son according to the law of primogeniture. To inherit immovable property such as land, heirs had to prove to an Inquisition (essentially a jury of local people) their right to inherit. The records granting these rights are called retours of services of heirs. The process for the land transfer was as follows:

1. A chancery court issued a brieve to summon local sheriffs to hold a jury trial
2. The jury would determine who was the legal heir

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<sup>1</sup> FamilySearch. *Scotland Probate Records* [database online]. ([https://familysearch.org/learn/wiki/en/Scotland\\_Probate\\_Records](https://familysearch.org/learn/wiki/en/Scotland_Probate_Records)). Accessed 14 May 2015.

3. The jury returned (“retoured”) their verdict to the chancery
4. The chancery commissioned the sheriff to grant possession of the land to the heir and collect a fee payable to the crown

Records of actual transfers of land are called sasines. You will find more information about these records in the Land and Property section of the FamilySearch Wiki (<http://wiki.familysearch.org>).

## Testaments

Again, testaments dealt with moveable property, sometimes called ‘guids’ [goods] and ‘geir’ [gear]. Moveable property was by custom divided into a maximum of three parts: the widow's part, the bairns part (all children, including the eldest, had a right to an equal share) and the dead's [deid's] part. The dead's part could be disposed of any way the deceased wished. If there wasn't a widow then the two remaining parts would be divided in half.

There are two types of testaments:

- If a person died leaving a will that named an executor, the document confirming that executorship and the attached testament is called a testament testamentar (like an English probated will).
- If a person died without leaving a testament and the court appointed an executor to administer the estate, then the confirming document is called a testament dative (like an English administration).

Both of these also contain an inventar (inventory of moveable property). Inventories can include household furnishings, clothes, jewelry, books, papers, farm stock and crops, tools and machinery, money in cash, bank accounts and investments. Inventories can be brief overviews of heritable possessions or detailed, itemized lists.

A Scottish testament testamentar typically included four parts. They were:

- Introductory clause
- Inventory of moveable estate
- Copy of deceased's will and naming of executor
- Confirmation clause

A Scottish testament dative was made up of only three parts, lacking the copy of a will.

## Determining Court Jurisdictions

To find a testament for your ancestor, it's best to start with the most likely jurisdiction in which the “probating” of the estate would have taken place. Before the Scottish Reformation and the establishment of the Presbyterian Church in 1592, confirmation of testaments was the prerogative of Episcopal (bishop's) courts. Their subordinates, called official or commissariot courts actually carried out the probate function.

After the Scottish Reformation in 1560, fifteen (eventually 22) commissariots were established by royal authority. The principal commissariot court was in Edinburgh, and it had both local and general jurisdiction. The territorial extent of the commissariot courts paid little attention to county boundaries. This system stayed in force until the end of 1823.

Commissariot court jurisdictions are found easiest at the ScotlandsPeople ([www.scotlandspeople.gov.uk](http://www.scotlandspeople.gov.uk)) website. Click on the ‘Wills & Testaments’ link in the column on the left. Excellent historical and record information is provided there. For jurisdictions, locate the

link labeled 'Courts Map' and you will be taken to a selectable county map page. To identify which courts operate in a given county, just click on the appropriate county. You may also want to click on the 'About The Courts' link just below it. It will take you to a page about the courts and also have a link to the map page. In the Family History Library, you can use the following guides:

- Testaments and Commissariat Records of Scotland. Salt Lake City, Utah: Genealogical Society of Utah, 1972. (Family History Library book 941 P2gs; fiche 6054479.)
- Kathleen Cory. Tracing Your Scottish Ancestors, Third Edition. Baltimore, MD: Genealogical Publishing Company, 2004. Appendix III provides a table listing all parishes, among other things identifying Commissariat(s) which included that parish, and date of first testament or inventory for the parish.
- Cecil Sinclair. Tracing Your Scottish Ancestors: A Guide to Ancestry Research in the Scottish Record Office. Edinburgh, Scotland: Her Majesty's Stationery Office, 1990. (Family History Library book 941 D27s). Identifies court(s) by county along with ending dates for Commissariat and beginning dates for Sheriffs Court, which often overlap.

After 1823, beginning 1 January 1824 (although the system took a few years to fully evolve), testaments were confirmed by commissariat departments within the sheriff courts. The boundaries of these courts' jurisdictions are the same as the county boundaries, but the names of the courts are not necessarily the same as the names of the counties.

To determine a court after 1823 you need to know in which county your ancestor lived. You can then follow the same instructions for finding the commissariat courts described above.

## Finding Testamentary Records

The best place to look for both an index and for digitized copies of testamentary records is:

[www.scotlandspeople.gov.uk](http://www.scotlandspeople.gov.uk) The wills & testaments index contains over 611,000 index entries to Scottish wills and testaments dating from 1513 to 1925 depending on the earliest wills for the court. The index entry will list the name, title, occupation and place of residence, if given, of the deceased, along with the court and date.

ScotlandsPeople.gov.uk also has indexed about 26,000 wills of soldiers. Most are from World War I though there are quite a few from World War II and even a handful of soldiers wills before and after these conflicts.

[www.ancestry.co.uk](http://www.ancestry.co.uk) has indexes to the wills of the Prerogative Court of Canterbury from 1384-1858 and to the Principal Probate Registry in England from 1861-1941. Ancestry calls the latter the "National Probate Calendar". Sometimes there are wills of Scottish people in these indexes. For example, a person who was living in England at the time of death but had property in Scotland could have a will in the Principal Probate Registry. Most of the Scottish people listed in this index will also be listed in Scottish testamentary indexes.

For those in the Family History Library indexes to testamentary records are listed in the library's catalog, do a Place search for: Scotland -- Probate records--Indexes and Scotland, [County] -- Probate records—Indexes.

The original records of the commissariat and sheriff courts are housed at the National Archives of Scotland in Edinburgh.

The Family History Library has indexes to and microfilm copies of the commissariat court records to 1823 and some sheriff court records. To find these records, look in the Locality

Search of the Family History Library Catalog under:

Scotland -- Probate records

Scotland, [County] -- Probate records

For probate records for the years 1876-1936 held in the Family History Library, there are bound volumes and microfilm copies of Calendars of Confirmations and Inventories. The call numbers can be located through the Family History Library catalog. You can obtain information from the Confirmations such as name of deceased, where living at time of death, when and where died, occupation, and the person or persons named as executors or administrators.

## Difficulties in Finding a Testament

If you have difficulty locating a testament, keep these points in mind:

- Only a small percentage of the population of Scotland left testaments.
- A person's pre-1823 testament could have been proved in the Commissary Court of Edinburgh, or any other commissariat, even though he or she lived elsewhere in the country.
- A person's post-1823 testament could have been proved in the Sheriff Court of Edinburgh even though he or she lived elsewhere in the country.
- A person who died outside of Scotland but who owned property within Scotland would have his or her testament proved in an Edinburgh court but sometimes also in an English court, such as the Prerogative Court of Canterbury (available by searching the Discovery catalogue of The UK National Archives website and [www.ancestry.com](http://www.ancestry.com)).
- Testaments for women may be under their maiden name.

## Handwriting Help

The website [www.scottishhandwriting.com](http://www.scottishhandwriting.com) has tutorials on how to read old Scottish handwriting. Also, [www.scotlandspeople.gov.uk](http://www.scotlandspeople.gov.uk) has a search of research tools under the "Help & Resources" tab on the home page that can help other occupations, archaic Scottish words and many other things.

## Further Reading and Help to Understanding the Records

Burness, Lawrence. A Scottish Genealogist's Glossary. Aberdeen: Aberdeen & North East Scotland Family History Society, c1990. (FHL British Ref 941 D27bL)

Burness, Lawrence. A Scottish Historian's Glossary. [Scotland]: Scottish Association of Family History Societies, c1997. (FHL British book 941 H26b)

Encyclopedia of the Laws of Scotland. 16 vols and 2 supps. Edinburgh: W. Green & Son, Ltd., 1926. (FHL British book 941 P36e) Note: Vol. 11 is available at archive.org

Gibb, Andrew Dewar. Student's Glossary of Scottish Legal Terms. Edinburgh: W. Green & Son, Ltd., 1946 (FHL British book 941 P36g)

Gouldesbrough, Peter. Formulary of Old Scots Legal Documents. Vol. 36 Edinburgh: The Stair Society, 1985. (FHL British book 941 B4st v. 36)